HIGH COURT OF CHHATTISGARH : BILASPUR
SB: HON'BLE SHRI JUSTICE VIJAY KUMAR SHRIVASTAVA
CRIMINAL APPEAL NO.96 of 1990

Appellant : State of Madhya Pradesh, at present Chhattisgarh

Versus

Respondents:

1) Harbansh, S/o Dayaram, aged about 22 years.
2) Dhruv, S/o Dukhuwa, aged about 20 years.
3) Anjore Das, S/o Alakhram, aged about 45 years.
4) Jawahar, S/o Babulal, aged about 28 years.
5) Munna, S/o Anjore Das, aged about 30 years.
6) Kaniram, S/o Babulal, aged about 30 years

All are residents of Nayapara Arondha, P S Takhatpur, Tahsil, Takhatpur, Dist-Bilaspur (CG)

PRESENT:

Shri UNS Deo, Additional Public Prosecutor with Shri DK Gwalre, Dy GA for the Appellant / State.

Shri Rajeev Shrivastava, counsel for the respondents.

J U D G M E N T

(Dated 6th September 2006)

Judicial Magistrate, First Class - Bilaspur, in Criminal Case No.464/1985 vide its judgment dated 27.12.1988 acquitted all the respondents of the charges for committing offence punishable

under Sections 147, 323, 324 & 325 of the IPC. Being aggrieved, the State has filed the instant appeal under Section 378 of the Cr.P.C.

2) Factual matrix of the case, in brief, is that on 11.08.1985, at about 6 am, Mewaram and Indal, were going to their field for 'Byasi Operation', along with their animals. While passing through the field of Babulal, he objected and caught Mewaram and assaulted him. When Bhukhau came to rescue, he was also assaulted by Jawahar. Bhukhau along with his son Mewaram and Indal returned to his house. When they reached near their house, they were surrounded by Munna, Jawahar, Anjore, Dhruv and Babulal. Anjore was carrying a Tabbali and others were armed with lathi. They started beating Bhukhau, when Bhecheram, Sunder and Indal came to rescue, they were also assaulted by all those persons & Harbansh.

3) Bhukhau lodged the report. FIR was registered; all the injured persons were sent for medical examination. Dr Habib examined Bhukhau, Indal, Beniram, Sunderlal and Mewaram. After examination, he prepared examination report describing all the injuries found on their body and sent his report to Police. On his advice, X-ray of Bhukhau was also taken. Witnesses were examined; Tabbali and clubs were recovered and seized. After investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Bilaspur for trial.

4) Charge under Sections 147, 323, 324 and 325 was framed against the respondent Anjore Das, and charge under Sections 147, 323, 325 was framed against rest of the respondents and the same was read over and explained to them, they abjured their guilt. Their defence was that they are innocent and have been falsely implicated in the case because of animosity.

5) Learned trial Court, taking into account right of private defence available to the respondents and various infirmities present in the case as well in the statements of witnesses held that prosecution has failed to prove guilt beyond doubt against the respondents, therefore, vide impugned judgment, acquitted all the respondents with all the charges leveled against them.

6) Bhukhau, PW/1, Indal PW/2, Mewaram PW/5 have in their cross examination admitted the fact that out of the same incident, counter case against them is pending. From their statement, it is also clear that Sunderlal, Bhukhau, Beniram, Indal, Mewaram are facing the counter trial. Ex.D/8 is the injury report, which clearly establishes that Babulal received six injuries in the incident. Ex.D/9 is the medical examination report of Kaniram; which also establishes that six injuries have been received by him in the incident. From this report, it is also clear that even injury has been caused on vital parts of Kaniram. None of the prosecution witnesses explained as to how Babulal and Kaniram sustained numerous injuries on their bodies in the incident.

7) Sunderlal, PW/4 in his cross examination has deposed that the quarrel took place in the field of Babulal and Kaniram. Indal and Mewaram were passing through that field with their animals in which crop was there. Mewaram (PW/5) in his cross-examination stated that quarrel took place in the field of Babulal; he was going along with his animals. Crop was present in the field. From this evidence, it is clear that Mewaram and Indal were going through the field, in which crop was present, they not only passed through it but were also taking their animals through that field, therefore, Babulal and Kaniram had right to protect their crop and to remove the intruders.

8) Bhukhau (PW/1) in examination-in-chief deposed that his son Mewaram went to his field who was beaten by Babulal with a club and when he reached the site, he saw his son Mewaram lying on the ground. He asked Babulal why he had beaten his son, by that time, Kaniram and Jawahar also reached there and they assaulted him by lathi on his head. Harbansh and Munna also came there and chased him. Anjore assaulted him on his left ear and hand by Tabbali. Thereafter, all the appellants assaulted Beniram (father of Bhukhau). Jawahar and Dhruv also assaulted Beniram with a lathi. When Bhukhau entered inside his house, Harbansh and Anjore struck on his door by a Tabbali, and cut it. In cross examination, he has stated that when Mewaram left to his field, at that time, he was in his house. When he reached his field, he found Mewaram lying there. Further he has stated that he saw Babulal sitting over on the chest of Mewaram. Further he deposed that Babulal did not assault Mewaram in his presence. He also stated that when Babulal started beating him, Mewaram stood up but did not come to rescue him. Babulal assaulted him with a lathi. He has also stated that when he came to the street, all the appellants surrounded him, Anjore and Harbansh assaulted him by Tabbali. He is author of FIR and his statement under Section 161 has also been recorded by the Police. From his cross examination it appears that his statement before the Court is contradictory to his report and previous statement. He stated in his statement that he did not report that when animals passed through the field of Babulal, he asked Mewaram why he was passing his animals through his field and caught him. He also stated that he did not state before police that when Mewaram passed the animals through the field of Babulal, He caught hold of Mewaram and started beating him. He has reported that Kaniram and Jawahar came together from their house, why name of Jawahar has not been written in his report, he does not know. He further stated that he reported that Harbansh and Munna

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came and beat Sunder. In his police statement, he has stated that Munna assaulted Sunder but why these facts have not been written in his statement, he could not explain it. He has reported that Harbansh assaulted on his head by tabbali; but why this fact has not been recorded in his report, he does not know the reason and when the same fact is missing in his police statement, he has no reason to explain. Jawahar and Dhruv assaulted Beniram by lathi; why this fact does not find place in his report and statement, he has no reason to explain.

9) He also in his cross examination stated that Kaniram assaulted Indal, but he did not become unconscious. Indal came back along with him and Mewaram whereas Indal (PW/2) stated that Kaniram, Jawahar and Babulal assaulted him by a lathi he fell down and became unconscious. When he became conscious, he came to his house.

10) Indal (PW/2) in examination-in-chief stated that in the early morning when he was going towards his field, he saw Kaniram, Jawahar and Babulal beating Bhukhau and Mewaram and when they saw him, they left Mewaram, Bhukhau. Kaniram, Jawahar and Babulal assaulted him by lathi. He fell down and became unconscious; when he became conscious, he came to his house and was sitting in his courtyard. Harbansh carrying an axe and Anjore carrying tabbali came and started beating his door. In cross examination, he stated that he did not give the statement of portion A to A, B to B, C to C, D to D of Ex.D/1 i.e. statement recorded by Police under Section 161 of the Cr.P.C. In his cross examination, he stated that when Mewaram cried, at that time, he was not present on the spot and Bhukhau was also not present on the spot by that time. He further stated that all the appellants assaulted Bhukhau and Mewaram and they did not assault him. He also stated that Mewaram and Bhukhau when they

were beaten by all the appellants in the field they became unconscious. He was unconscious for about 20 minutes and when he became conscious, afterwards Bhukhau and Mewaram stood from the ground and at time no one was present there. He in his cross examination stated that Jawahar and Harbansh assaulted Beniram. He also stated in his police statement that Jawahar, by means of lathi assaulted Beniram, therefore, his hand was broken. He was beaten in the field and thereafter he came to his house. Anjore and Harbansh carrying axe came to his house and cut his door but why all these facts have not been written in his police statement, he has no reason to explain.

11) Beniram (PW/3) in his examination-in-chief deposed that Jawahar and Dhruv assaulted him by lathi. Anjore assaulted Bhukhau by lathi in his house. Anjore, Jawahar, Kaniram and Dhruv brought Bhukhau to his house by chasing him. In cross examination, he stated that he did not witness the incident, wherein Bhukhau was assaulted by the appellants. Further in cross examination he says that all the appellants assaulted him and Bhukhau , he contradicted his previous statement Ex.D/2 portion A to A, B to B.

12) Sunderlal (PW/4) in examination-in-chief deposed that when Indal and Mewaram were taking their animals through the field, Babulal obstructed them and assaulted them. Thereafter, Harbansh, Kaniram, Jawahar, Munna and Anjore came; they assaulted Bhukhau and Indal by lathi. Indal, Bhukhau, Mewaram rushed from the spot to their house and when they reached inside the hosue, Harbansh and Anjore struck their door by tabbali, Dhruv and Jawahar assaulted Beniram by lathi. Jawahar assaulted him by lathi. In his cross examination, he contradicted his previous statement portion A to A, B to B, of Ex.D/2 i.e. statement recorded by Police during the investigation. He further stated that in his statement recorded by

the Police, he stated that around 6.00 a.m. in the morning Mewaram and Indal were going towards their field. Babulal obstructed them and assaulted them. Anjore by tabbali, gave a blow on the door and Harbansh cut the door, Dhruv and Jawahar assaulted Beniram and caused fracture on his hand. When Bhukhau and Indal were brought by the appellants, he requested them not to beat Bhukhau and Indal. Why Police in its statement i.e. Ex.D/2 did not record all these facts, he failed to explain the reasons for it.

13) Mewaram (PW/5) in his statement in examination-in-chief deposed that Babulal assaulted him by lathi and also pressed his neck, he cried, hearing his noise, his father Bhukhau came. Babulal by means of lathi, assaulted Bhukhau. Kaniram, Jawahar and Mewaram came there, they assaulted him and Bhukhau. However, they rushed towards their house, Beniram requested the appellants not to beat but Jawahar assaulted Beniram and his hand was broken. Anjore and Harbansh cut their door. In cross examination he has contradicted his previous statement recorded by Police portion A to A of Ex.D/3. He further stated that before police he stated that Munna, Kaniram and Jawahar assaulted his father by lathi. All the appellants after beating his father again assaulted him. All the appellants beat his door, but why Police in its statement did not record all these facts, he has no reason to explain.

14) Bhukhau (PW/1) Indal (PW/2), Beniram (PW/3), Sunderlal (PW/4), Mewaram (PW/5) are close relatives and all these witnesses are neighbours also. This fact has been established by Sunderlal (PW/4). From the detailed statements of all these witnesses, it is evident that witnesses are not only contradicting each other, but their statements are contradictory to their previous

version. Also on some parts, their evidence does not appear to be natural.

15) From the foregoing discussion, it is clear that various infirmities are present in the statements of all the witnesses adduced by the prosecution in support of their case and right of private defence of person and property was also present in favour of the respondents. Therefore, finding of learned trial Court that prosecution failed to establish beyond doubt guilt against the respondents does not call for any interference.

16) In the result, the appeal filed by the State fails and is dismissed.

Sd/-
Vijay Kumar Shrivastava
Judge

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